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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/721,520

11/24/2003

Chester Kolton

38-112

5317

27690

7590

11/12/2004

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EXAMINER

TRIEU, VAN THANH

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/721,520

Applicant(s)

KOLTON ET AL.

Examiner

Van T Trieu

Art Unit

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## ***DETAILED ACTION***

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1, 2, 4-6, 8, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yeager et al** [US 5,969,613].

Regarding claim 1, the claimed electronic article surveillance assembly (600) comprising an upstanding housing (201 or 601) having a closed ceiling (203 or 603) and a floor (220 or 604) having a continuous peripheral portion (221 or 641) bounding a central floor opening, the housing (201 or 601) having an interior cavity (229) communicating with said central floor opening, an EAS marker (230 or 630) being

disposed in the housing interior cavity (229), the housing (201 or 601) defining a sidewall (226 or 621) extending from the ceiling (203 or 603) to said continuous peripheral floor portion (221 or 641), see Figs. 8, 11, 12 and 17-19, col. 2, lines 52-64, col. 8, lines 10-59 and col. 12, lines 32-57); but **Yeager et al** fails to disclose the tapered to form the housing with a periphery having a V-shaped cross-section.

However, **Yeager et al** suggests that the security device 10, 200 or 600 includes a house 11, 201 or 601. As the lid/top 13 enters base/bottom 14, tapered entry surface 56 of each lock nubs 55 on base 14 engages and slides over tapered entry surface 56 has slid over tapered entry surface 33 to close the house 11, 201 or 601 in substantially a rectangular/square housing, see Figs. 1, 2 and 5-8, col. 5, lines 25-33, col. 6, lines 20-24 and col. 7, lines 1-9. Since the shape cross-section is not critical to the designed and operation function of the EAS security device, it would have been obvious to one skill in the art to recognize that it is a design choice to choose the shape of the EAS security housing to either V-shape, rectangular-shape or square-shape, as desired without affecting and changing operation functions of the EAS security device.

Regarding claim 2, all the claimed subject matters are discussed in respect to claim 1 above, and including the bottom enclosure member secured to an interior surface of the floor continuous peripheral portion, see Figs. 1, 8 and 10-12.

Regarding claim 4, the claimed continuous floor peripheral portion is an arcuate configuration, which met by the discussion of the V-shape cross-section of the EAS

Art Unit: 2636

security housing in respect to claim 1 above, wherein the V-shape cross-section is the arcuate configuration.

Regarding claim 5, all the claimed subject matters are discussed in respect to claim 4 above, wherein the lid, top or ceiling is as well as an arcuate configuration.

Regarding claim 6, all the claimed subject matters are discussed in respect to claim 5 above.

Regarding claim 8, all the claimed subject matters are discussed in respect to claim 1 above.

Regarding claim 9, all the claimed subject matters are discussed in respect to claims 2 and 8 above.

Regarding claim 11, all the claimed subject matters are discussed in respect to claims 4 and 8 above.

Regarding claim 12, all the claimed subject matters are discussed in respect to claims 5 and 11 above.

Art Unit: 2636

Regarding claim 13, all the claimed subject matters are discussed in respect to claims 6 and 12 above.

2. Claims 3, 7, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yeager et al** [US 5,969,613] in view of **Sankey et al** [US 6,092,401]. Regarding claim 3, **Yeager et al** fails to disclose the adhesive layer disposed on the bottom closure member and the floor continuous peripheral portion. However, **Yeager et al** teaches that the lid/top and the bottom/base of the security device 10, 200 or 600 are tapered by a plurality of lock nubs 55 to secure the EAS housing 11, 201 or 601, see Figs. 1, 2 and 5-8. **Sankey et al** suggests the EAS security device 2 includes a housing 4 with a base 12 and a top 18, which are secured by hinges 16 and locking mechanism 14. It is preferred that the cover/top 18 is fixedly attached to base/bottom 12 by known means such as ultrasonic welding or through the use of appropriate adhesive, see Figs. 3, 4, 6 and 8, col. 4, lines 8-28 and col. 6, lines 12-31. Therefore, it would have been obvious to one skill in the art at the time the invention was made to substitute the means of adhesive attachment of **Sankey et al** for the hinge and lock nubs of **Yeager et al** for totally sealing of stranger materials get into the security device, such as dirt, small particles and moisture, which causes damage to the EAS security device.

Regarding claim 7, all the claimed subject matters are discussed between **Yeager et al** and **Sankey et al** in respect to claims 3 and 6 above.

Regarding claim 10, all the claimed subject matters are discussed between **Yeager et al** and **Sankey et al** in respect to claims 3 and 9 above.

Regarding claim 14, all the claimed subject matters are discussed between **Yeager et al** and **Sankey et al** in respect to claims 3 and 13 above.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Kolton et al** discloses an EAS marker assembly comprising a housing defining an interior cavity and an EAS marker and a weight member disposed in the housing interior cavity. [US 6,696,955]

**Kolton et al** discloses an EAS marker assembly comprising a housing contained an EAS marker and a strap member. [US 6,646,553]

**Kolton et al** discloses an EAS marker containing seal comprising a housing defining an interior recess seating an EAS marker and a latching structure adjacent an end of the housing. [US 6,543,261]

**Deschenes et al** discloses an EAS marker and method of manufacturing same, comprising a rigid bottom piece of molded plastic having the shape of an open rectangular box. [US 6,692,672]

Art Unit: 2636

**Baro et al** discloses an EAS tag, which is responsive to forces applied to the tag housing. [US 5,367,289]

**Bussard** discloses an EAS system including a housing, a detectable marker held by the housing, and a releasable magnetic lock. [US 4,774,503]

4. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. **Jeffery Hofsass** can be reached on (571) 272-2981.

A handwritten signature in black ink, appearing to read 'Van Trieu', with a long horizontal flourish extending to the right.

**Van Trieu**  
**Primary Examiner**  
**Date: 11/5/04**